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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 28.8.2007.

Birji and others .... Appellants.

vs

Bir Singh and others .... Respondents.

Judgment

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Ashok Kaushik, Advocate,for the appellants.

R.S.Madan, J.

This regular second appeal is directed against the judgment and decree dated 3.12.2005 rendered by Jagbir Singh Dahiya, Additional District Judge, Faridabad, in Civil Appeal No.24 of 11.3.2005, whereby the appeal of the plaintiffs- appellants against the dismissal of their suit was also dismissed.

Brief facts of the case are that the plaintiffs have claimed themselves to be declared as owners in possession of agricultural land measuring 9 kanals 1 marlas, situated in the revenue estate of Village Selothi, as detailed in para 1 of the plaint. It has been averred that the defendants- respondents are still recorded as owners of the suit land, though they have no title or interest in the same. The entry in the column of ownership in favour of defendants with respect to suit land is wrong and liable to be corrected as they (plaintiffs) are entitled to be declared as owners in possession of the suit land in lieu of long possession. It has also been pleaded that they have been in cultivating possession as tenants Bashre- Malkan Bawaje Derina under the defendants and their predecessors

for long time. It has also been alleged that they were never ejected by the defendants from the suit land and no change of land tax was effected uptill now and, therefore, they have acquired the occupancy rights qua the suit land. They have submitted that the defendants have threatened them to dispossess from the suit land forcibly on the basis of wrong revenue record.

The suit was contested by the defendants- respondents and denied all the averments made in the plaint and inter-alia pleaded that they have been rightly recorded as owners of the suit land in the revenue record. They have also denied that the plaintiffs have acquired the occupancy rights regarding the suit land and therefore, they are not entitled to be declared as owners in possession of the suit land. They have also raised preliminary objections with regard to locus standi, maintainability, limitation and estoppel etc.

The plaintiffs filed replication controverting the averments made in the written statement and reasserting those of the plaint.

On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiffs are the owners in possession of the agricultural land measuring 9 kanals and 1 Marlas as mentioned in para no.1 of the plaint as prayed? OPP
2. Whether the plaintiffs are entitled for injunction as prayed for? OPP
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
4. Whether the suit is not within time? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit of the plaintiffs is barred by the

principles of resjudicata? OPD

7. Whether the plaintiffs are estopped from filing the present suit by their act, conduct and acquiescence? OPD
8. Whether the suit is barred u/o 23 Rule 1 and 2 of CPC? OPD
9. Whether the suit of the plaintiff is premature as alleged?OPD
10. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
11. Whether the suit of the plaintiff is false, frivolous vague and incomplete and plaintiffs have concealed true material facts from this court? OPD
12. Relief.

In support of their case, the plaintiffs examined PW1 Har Lal, PW2 Doji (plaintiff) and PW3 Hari Singh. The defendants failed to appear before the trial court on 11.11.1998, as a result thereof, they were proceeded ex-parte. After evaluating evidence, the learned trial court recorded findings on issues no.1, 2, 3, and 5 against the plaintiffs. However, issues No.4, 6 to 11 were decided in favour of the plaintiffs. In the result, the suit of the plaintiffs was dismissed with costs vide judgment dated 14.2.2005.

In first appeal, too, the appellants- plaintiffs could not succeed. The appellate court affirmed the verdict of the trial court, thereafter, they have come up in regular second appeal, to this court.

Heard.

It is not disputed by the learned counsel for the appellants that the appellants were not in possession of the land. It is also not disputed that the appellants have not produced any documentary evidence regarding payment of nominal rent to the defendants or their predecessors before or

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after the commencement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (for short the Act). In this view of the matter, the findings recorded by the court below do not call for any interference and this court cannot become a third court for evaluating the evidence led by the parties. The present appeal is fully covered by the law laid down by the Hon'ble Supreme Court in *Gurdev Kaur and others vs. Kaki and others* 2007 (1) Supreme Court Cases 546, wherein it has been observed that, "*The legislative intention is very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble".*

The questions raised by the learned counsel for the appellants are not substantial questions of law but are facts which cannot be gone into in this second appeal. In the net result, I find no merit in this appeal and the same is dismissed as such.

28.8.2007. (R.S.Madan)
vs. Judge.